

### POLICY GOVERNING THE DISPOSITION OF REAL PROPERTY BY THE ROCHESTER LAND BANK CORP.

The disposition of real property by the Rochester Land Bank Corp., herein referred to as the Land Bank, shall be governed by the general guidelines set forth in this Policy, and shall at all times be consistent with the provisions of Article 16 of the NYS Not-for-Profit Corporation Law (the "Land Bank Act"), applicable provisions of NYS Public Authorities Law ("PAL") and NYS Not-for-Profit Corporation Law ("N-PCL"), and all applicable Federal, State, and local laws, rules, regulations and ordinances. This Policy shall apply to any disposal, transfer or conveyance of real property of the Land Bank, including any real property interest, complete or inchoate, of the Land Bank, except for a property interest that secures a loan or other financial obligation of another party. Another policy of the Land Bank governs the disposition of personal property.

## 1. Coordination with City of Rochester initiatives

Properties shall be disposed of in a manner that supports the mission of the Land Bank in alignment with the City of Rochester's redevelopment strategies, municipal goals and objectives.

## 2. Disposition of Real Estate Interests

The Land Bank may convey, exchange, sell, transfer, lease as lessor, grant, release and demise, pledge any and all interests in, upon or to real property of the Land Bank.

# 3. Board Approval

All disposition of real property shall be approved by the Board prior to conveyance of title. The Land Bank shall not sell, mortgage, or lease any real property unless authorized by a majority vote of the Board as required pursuant to N-PCL § 1605 (2)(i)(5). The terms of any contract or agreement concerning the sale, lease, license, easement, encumbrance, or other alienation of any interest in real property of the Land Bank, shall be approved by the Board.

## 4. Ownership by Land Bank

Pursuant to § 1609(a) of the Land Bank Act, the Land Bank shall hold in its own name all real property acquired by the Land Bank irrespective of the identity of the transferor of the property.

## 5. Specified Purpose Property

As a Type C not-for-profit corporation and pursuant to N-PCL §513, the Land Bank shall hold full ownership rights in real property of any kind that may be given, granted, bequeathed or devised to or otherwise vested in the Land Trust in trust for, or with a direction to apply the same to, any purpose specified in the Land Bank's certificate of incorporation ("Specified Purpose Property"), and shall not be deemed a trustee of an express trust of such property. Except as may be otherwise permitted under Article 8 of the NYS Estates, Powers and Trusts Law or N-PCL §555 (regarding release or modification of restrictions on management, investment, or purpose), the Land Bank Board shall apply all Specific Purpose Property thus received to the purposes specified and to the payment of the reasonable and proper expenses of administration of such property.

## 6. Designation of Contracting Officer / Duties of Contracting Officer

Except as otherwise provided herein and in the New York State Public Authorities Law (PAL), the "Contracting Officer" shall be responsible for the disposition of real property owned by the Land Bank and shall be responsible for the Land Bank's compliance with, and enforcement of, this Policy. The Executive Director of the Land Bank is hereby designated as the Contracting Officer. As the Contracting Officer, the Executive Director has responsibility and authority for carrying out the directives of the Board with regard to disposition of property. All contracts shall be executed in the name of the Land Bank.

## 7. Authorized Signatory

The Board delegates to the Executive Director of the Land Bank the authority to enter into and execute agreements, instruments of conveyance and all other related documents pertaining to the conveyance of real property by the Land Bank. In the event that the Executive Director is unavailable, unable, or unwilling to carry out this responsibility, the Board President shall have authority to act in this capacity.

### 8. Disposition Methods

The Land Bank may dispose of real property, or any interest in real property, by the following methods:

- Conveyance of a partial interest by lease, license, easement, or other agreement;
- Transfer to a government entity;
- Public Auction;
- Sale by Request for Proposal;
- Negotiation;
- Sealed Bid; or
- Disposing of Specified Purpose Property in accordance with the instrument conveying such property to the Land Bank.

## 9. Disposal of Real Property

In each and every transfer of real property the Land Bank shall require good and valuable consideration in an amount determined by the Land Bank in its sole discretion. The Land Bank will consider both the fair market value of the property and the Property Costs in determination of consideration for each property. "Property Costs" shall mean the aggregate costs and expenses of the Land Bank attributable to the specific property being sold, including costs of acquisition, maintenance, repair, demolition, marketing, legal expenses of the property and indirect costs of the operations of the Land Bank allocable to the property.

The consideration to be provided to the Land Bank by the Transferee may take the form of monetary payments and secured financial obligations, deferred financing, performance of contractual obligations, imposition of restrictive covenants, or other obligations and responsibilities of the Transferee, or any combination thereof, and such other forms of consideration as are consistent with state and local law. The Land Bank may consider alternative financing options (i.e., providing a mortgage and promissory note) as a method of disposition in any transactions.

A. Appraisal: Prior to disposal, an appraisal shall be made by an independent appraiser of the value of any interest in real property. Said appraisal shall be in the Land Bank's record of the transaction for the Property.

- B. Available Procedures for Disposal of Real Property
  - (1) <u>Public Auction</u>: The Land Bank may dispose of real property and appurtenances thereto by auction:
    - (a) By publicly advertising the auction, publicly disclosing all bids, and award of the property in accordance with the three procedures required for sealed bidding as set forth in Subparagraphs 9(B)(2)(a), (b), and (c) of this Policy as set forth below; or
    - (b) Under PAL § 2897(6)(c)(ii), without the public advertising, disclosure and award processes set forth in Subparagraphs 9(B)(2)(a), (b), and (c) of this Policy as set forth below, provided that the fair market value does not exceed fifteen thousand dollars (\$15,000); or
    - (c) Under PAL § 2897(6)(c)(iii), when the bid prices after advertising therefor are not reasonable, either as to all or part of the property, or have not been independently arrived at in open competition.

Notice: The Land Bank shall publish a notice of the auction, the terms of the auction, and the qualifications for bidders in a manner designed to obtain as much competition as feasible under the circumstances.

- (2) <u>Sealed Bid</u>: The Land Bank may dispose of any real property and appurtenances, or interest therein, to any qualified purchaser by sealed bids under Public Authorities Law § 2897(6)(a) and (b) provided that:
  - (a) The public advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property; and
  - (b) All bids shall be publicly disclosed at the time and place stated in the advertisement; and
  - (c) The award shall be made with reasonable promptness by notice to the responsible bidder whose bid conforms to the invitation for the bid and is most advantageous to the state, after considering price and other relevant factors; provided that all bids may be rejected when it is in the public interest to do so.
- (3) <u>Transfers to Governmental or Public Entities</u>: The Land Bank may convey real property to governmental or public entities at the estimated fair market value and other satisfactory terms of disposal as determined by negotiation.

Where the terms and conditions of the transfer require that the ownership and use of the asset will remain with the governmental or public entity, real property may be disposed of for less than fair market value.

## (4) <u>Negotiation</u>:

- (a) The Land Bank may dispose of real property by negotiation and without publicly advertising for bids as provided for below and subject to obtaining such competition as is feasible under the circumstances:
  - i. When the fair market value of the real property does not exceed fifteen thousand dollars (\$15,000.00), or
  - *ii.* When bids obtained after advertising are not reasonable or have not been arrived at in open competition, or
  - iii. When the purpose of the disposal is within the Purpose, Mission, or Governing Statute of the Land Bank under PAL§ 2897(7)(a)(ii),or
  - iv. When such action is otherwise authorized by law.
- (b) Property Disposition Notice. Under PAL §2897(6)(d)(i) an explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:
  - i. Any real property (disposed of by other than lease or exchange) that has an estimated fair market value over one hundred thousand dollars (\$100,000.00) or
  - *ii.* Any real property disposed of by lease, if the estimated annual rent over the term of the lease is over fifteen thousand dollars (\$15,000.00); or
  - iii. Any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

The explanatory statement shall be transmitted not less than ninety (90) days prior to the Disposal of the Property to the New York State Comptroller, the Director of the Budget, the Commissioner of General Services, the Public Authorities Budget Office, and the Legislature. A copy of the explanatory statement shall be preserved in the files of the Land Bank.

- C. Disposal of Property for Less than Fair Market Value
  - (1) The Land Bank may dispose of real property for less than fair market value subject to the information and Board review requirements of Paragraphs 9(C)(2) and (3) of this Policy, below:
    - (a) Under PAL § 2897(7)(a)(i) when the disposal is to a governmental or other public entity, and the terms and conditions of the transfer require that the

- ownership and use of the asset will remain with the governmental or any other public entity; or ,
- (b) Under PAL§ 2897(7)(a)(ii) when the purpose of the disposal is within the Purpose Mission, or Governing Statute of the Land Bank.
- (2) Information to be provided to the Board: In the event that a below fair market value real property transfer is proposed, the following information must be provided to the Board and the public under PAL§ 2897(7)(b):
  - (a) A full description of the asset; and
  - (b) An appraisal of the fair market value of the asset, and any other information establishing the fair market value sought by the Board; and
  - (c) A description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits to the communities in which the asset is situated as required by the transfer; and
  - (d) A statement of the value received compared to the fair market value; and
  - (e) The names of any private parties participating in the transfer, and if different than the statement under Subparagraph (d) of this Section, above, a statement of the value to the private party; and,
  - (f) The names of other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.
- (3) Board approval: Prior to disposing of property for less than market value, the Board shall consider the information described in Paragraph 9(C)(2) of this Policy and make a written determination by Resolution that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer.
- D. Specified Purpose Property: Specified Purpose Property (defined in Section 5 of this Policy) shall be disposed:
  - in accordance with the instructions, if any, contained in the instrument conveying such property to the Land Bank;
  - in a manner that does not substantially interfere with the specified purpose of the conveyance to the Land Bank; and
  - in accordance with a method provided for under Sections 9.A, 9.B, of 9.C of this Policy, but only to the extent doing so does not contradict the instructions and purposes provided for under Paragraphs 9(D)(1) and 2 of this Policy.

## 10. Option to Purchase Real Estate

The Land Bank may grant an option to purchase real estate for a specified percentage of the purchase price with a negotiated time frame to be determined by the Land Bank. This payment will be credited to the sale price at closing. If closing does not occur, the fee shall be forfeited. All option agreements are subject to all policies and procedures of the Land Bank pertaining to property transfers.

## 11. Planned Disposition Strategy

A subsequent use that furthers community development objectives, along with an estimated schedule for implementation, must be identified prior to disposition.

For conveyances that are subject to a development proposal, the Land Bank will require potential Transferees to submit a plan that includes, at a minimum, the following:

- Project description, including ultimate use of property
- Development schedule
- Investment plan including projected development costs and sources of funding
- Experience of Transferee in undertaking similar projects
- References

All tax incentives and financing necessary for the development to be completed must be committed prior to actual disposition.

All Transferees shall be required to comply with all terms of the approved development proposal, the purchase offer, the City's Zoning Ordinance and Building Code, and the laws and/or ordinances of all other agencies that may have jurisdiction.

### 12. Structure of Conveyances

Transactions shall be structured in a manner that permits the Land Bank to enforce recorded covenants or conditions upon title pertaining to development and use of the property for a specified period of time. Such restrictions may be enforced, in certain cases, by means of a reverter clause in the deed conveying title to a Transferee, and/or reliance on subordinate financing held by the Land Bank.

### 13. Qualifications of Transferee

Individuals and entities seeking to acquire real property from the Land Bank, or to enter into transaction agreements with the Land Bank, will be required to provide such information as may be requested by the Land Bank, including but not limited to the legal status of the Transferee, its organizational and financial structure, and its prior experience in similar property development or management.

The Land Bank deems it to be in the best interest of the City of Rochester to convey real property to individuals and entities who will be responsible property owners, and to that end the Land Bank hereby adopts the purchaser eligibility guidelines set forth in § 21-16 of the Charter and Code of the City of Rochester. Prior to transferring real property, the Land Bank shall review City real property tax, code enforcement and other records to determine whether a potential Transferee is disqualified under this Policy. These provisions shall apply to all Transferees including purchasers and lessees.

Individuals and entities shall be prohibited from acquiring ownership or property rights from the Land Bank if they:

- have engaged in fraudulent activity in connection with the sale of a City-owned or Land Bankowned property;
- have lost real property through City tax foreclosure proceedings within the previous five years;
- own property within the City of Rochester for which taxes are not current;
- have had a sale cancelled by the City of Rochester within the previous three years;
- have been held in contempt of a court order for failure to abate code violations within the previous five years;
- have unsatisfied judgments in the Municipal Code Violations Bureau within the previous five years; or
- own property within the City of Rochester that is in violation of City codes, unless the
  violation(s) are on property that is part of a construction, rehabilitation or development
  project, or is undergoing periodic Certificate of Occupancy renewal, and it is established by
  the City of Rochester Department of Neighborhood and Business Development that the
  owner is making satisfactory progress toward the abatement of said violation(s).

A material failure to perform in prior transactions with the Land Bank shall also render an individual or entity ineligible to purchase of real property from the Land Bank.

Individuals and entities that were the prior owners of real property at the time of tax foreclosure which transferred title to the Land Bank shall be ineligible to be the Transferee of such property from the Land Bank, except that the Board of the Land Bank in its sole discretion may approve a short-term rental agreement with a prior owner.

Parties that are not able to demonstrate sufficient experience and capacity to perform in accordance with the requirements of the Land Bank shall be ineligible to purchase real property from the Land Bank.

Where the Transferee is not an individual, the provisions cited in this section shall also apply to officers, principals and related businesses or associations. Such provisions shall not apply to purchasers of unbuildable vacant land.

The Land Bank reserves the right to independently investigate and consider the Transferee's experience and business activities in other jurisdictions, as well as to consider references, both those that are submitted and others that may be solicited by the Land Bank. All determinations of the eligibility or qualification of any Transferor shall be at the sole and absolute discretion of the Land Bank.

### 14. Conveyance to Tax-Exempt Entity

The Land Bank may give preference to proposals to transfer real property into private ownership for taxable uses. However, given the unique nature of some properties, the Land Bank may consider a

tax-exempt use that supports the mission of the Land Bank and is in congruence with municipal strategies, goals and objectives. Except in the discretion of the Board for overriding charitable, educational and other public interests, in a conveyance to a non-governmental tax-exempt organization, the Transferee shall waive its tax-exempt status for five years and agree to pay property taxes for that period of time, unless the Transferee currently owns a tax-exempt property within 500 feet of the real property acquired from the Land Bank. The Transferee shall further agree not to transfer, re-sell or convey the subject premises to a tax-exempt organization for a period of five (5) years from the date of the recording of the deed from the Land Bank. This covenant shall be contained in the deed from the Land Bank to the Transferee.

### 15. Environmental

Unless otherwise approved by the Board, the Transferee shall be solely responsible for performing and conducting its own due diligence as to the physical and environmental condition of the real property being conveyed. The Land Bank shall supply the Transferee with copies of all environmental reports (the "Environmental Reports") it has in its possession in regard to the real property conveyed. Transferee shall accept the real property in "as is" condition, and shall agree to assume and undertake any and all liability and expense resulting from the presence of hazardous substances or pollutants of any kind in, on, or beneath the real property, and/or removal or other remediation of any such hazardous substances or pollutants, except to the extent that the presence or release of any such hazardous substances or pollutants has resulted from or arisen out of actions of the Land Bank, its agents, employees or contractors.

## 16. Lead-Based Paint and/or Lead-Based Paint Hazards

The Land Bank shall comply with the disclosure requirements of the Residential Lead-Based Paint Hazard Reduction Act (Title X) passed by Congress in 1992 and the regulations which were issued to implement said legislation, in the conveyance of all real property constructed prior to 1978 containing one or more residential dwelling units, unless such property is specifically excluded from the rule. The Land Bank shall disclose all known lead-based paint and/or lead-based paint hazards and further provide any available reports of lead-based paint testing regarding residential dwellings covered under this rule. Transferees shall have the opportunity, for a 10-day period, to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards, at their own expense. By mutual agreement of the Land Bank and Transferee, the time period may be shortened or lengthened. The Transferee may waive the inspection opportunity.

### 17. Access Insurance

The Land Bank may grant an access or license agreement to permit a Transferee to conduct due diligence activities or take occupancy prior to conveyance of title, or for such other purposes as deemed necessary to carry out the purpose of the planned disposition. The Land Bank may also enter into a lease agreement. During a license period and/or lease term, the Transferee shall agree to defend, indemnify and hold the Land Bank and the City of Rochester harmless from any and all claims for bodily injury or property damage occurring or alleged to have occurred at the subject property. Transferee shall insure the property with liability insurance with such minimum coverage limits as may be approved by the Land Bank. All such insurance policies shall be issued in the name of the Transferee, the Land Bank and the City of Rochester as additional insured, and a copy of a bona fide certificate of insurance evidencing the coverage provided in the policy shall be delivered by the Transferee to the Land Bank on or before the date of commencement of the license period.

### 18. Boundary Lines

The Land Bank may grant and accept easements to resolve boundary line title tissues, including building encroachments between adjoining parcels and fence encroachments. The Executive Director may authorize boundary line agreements and driveway agreements with the owners of parcels adjacent to Land-Bank owned parcels, without conveyance of ownership. Consideration for boundary line agreements may be set at \$1 (payment waived).

## 19. Disposition by Commissioner of General Services

If the Board deems that disposition of real property by the Commissioner of General Services will be advantageous to the Land Bank and the State of New York, the Land Bank may enter into an agreement with the Commissioner of General Services whereby the Commissioner may dispose of real property of the Land Bank under terms and conditions agreed to by the Land Bank and the Commissioner of General Services. In disposing of any such property of the Land Bank, the Commissioner of General Services shall be bound by the terms of Title 5-A of the Public Authorities Law, and references to the Contracting Officer shall be deemed to refer to the Commissioner of General Services.

## 20. Disposition of Proceeds of Sale

Any proceeds from the sale or transfer of real property by the Land Bank shall be retained, expended, or transferred by the Land Bank as determined by the Board in the best interests of the Land Bank and in accordance with the Land Bank Act and this Policy.

### 21. Inventory of Real Property Dispositions

Pursuant to N-PCL §§ 1609(b) and 1609(g), the Land Bank shall maintain and make available for public review and inspection a complete inventory of all real property dispositions. The inventory shall include a complete copy of the sales contract including all terms and conditions including, but not limited to, any form of compensation received by the Land Bank or any other party which is not included within the sale price. Within one week of the disposition of any parcel of real property, the Land Bank shall list the parcel in the inventory. The inventory records shall remain available for public inspection indefinitely.

Pursuant to N-PCL §513, the Land Bank shall cause accurate accounts of its Specified Purpose Property separate and apart from the accounts of the Land Bank's other assets. Unless the terms of the particular instrument conveying the Specified Purpose Property provide otherwise, the Land Bank treasurer shall make an annual report to the Board concerning such property, the use made, and the income thereof.

#### 22. Retention of Records

Copies of all real property disposition contracts shall be retained indefinitely by the Land Bank. Copies of contracts under this section shall be kept as a part of the Land Bank's disposition file and shall be incorporated into the disposition inventory as set forth in Section 21 of this Policy. Copies may be kept in original form, electronically, or in both forms.

### 23. Annual Reports

# A. PAL §2896(3) Property Report

The Land Bank shall publish annually a report listing all property of the Land Bank, as required pursuant to PAL §2896(3)(a). Such report shall include a list and full description of all real and personal property disposed of during such period. The report shall contain the price received by the Land Bank and the name of the purchaser for all such property sold by the Land Bank during such period. The Land Bank shall deliver copies of such report to the Comptroller of the State of New York, the Director of the Budget of State of New York, the Commissioner of the New York State Office of General Services, the New York State Legislature, and the Authorities Budget Office as required pursuant to PAL §2896(3)(b).

# B. PAL §2800 Comprehensive Report

Within another annual report that the Land Bank is required to provide to City officials and to the NYS Authorities Budget Office within ninety days after the end of its fiscal year pursuant to PAL §2800(2)(a), the Land Bank shall include, among several other items, a listing and description of each parcel of real property having an estimated fair market value in excess of fifteen thousand dollars (\$15,000.00) that the Land Bank has acquired or disposed of during its fiscal year, including the price or other consideration received or paid and the name of the purchaser or seller.

## C. Specified Purpose Property

Pursuant to N-PCL §513, the Land Bank shall cause accurate accounts of its Specified Purpose Property separate and apart from the accounts of the Land Bank's other assets. Unless the terms of the particular instrument conveying the Specified Purpose Property provide otherwise, the Land Bank treasurer shall make an annual report to the Board concerning such property, the use made, and the income thereof.

## 24. Exceptions to Policy

Any transaction that requires an exception to this Policy governing real property dispositions shall require the approval of the Land Bank Board, with a description of the exception and the reasons therefor.

## 25. Annual Review and Amendments of Policy

This Policy is subject to modification and amendment at the discretion of the Board in accordance with the PAL §2800 and N-PCL §520. The Policy shall be reviewed and approved annually by the Land Bank Board. On or before March 31<sup>st</sup> of each year, the Policy most recently reviewed and approved including the name of the Contracting Officer shall be filed with the Comptroller of the State and posted on the Land Bank's website.